

ORIGINAL

OPEN MEETING ITEM



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COMMISSIONERS
KRISTIN K. MAYES - Chairman
GARY PIERCE
PAUL NEWMAN
SANDRA D. KENNEDY
BOB STUMP



MICHAEL P. KEARNS
Interim Executive Director

ARIZONA CORPORATION COMMISSION

Arizona Corporation Commission

DOCKETED

DATE: FEBRUARY 4, 2009

DOCKET NO: T-04027A-06-0061

FEB 04 2009

TO ALL PARTIES:

DOCKETED BY

Enclosed please find the recommendation of Administrative Law Judge Sarah N. Harpring. The recommendation has been filed in the form of an Order on:

TELEFYNE INCORPORATED
(CANCEL CC&N)

Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Administrative Law Judge by filing an original and thirteen (13) copies of the exceptions with the Commission's Docket Control at the address listed below by 4:00 p.m. on or before:

FEBRUARY 13, 2009

The enclosed is NOT an order of the Commission, but a recommendation of the Administrative Law Judge to the Commissioners. Consideration of this matter has tentatively been scheduled for the Commission's Open Meeting to be held on:

MARCH 3, 2009 and MARCH 4, 2009

For more information, you may contact Docket Control at (602)542-3477 or the Hearing Division at (602)542-4250. For information about the Open Meeting, contact the Executive Director's Office at (602) 542-3931.

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AZ CORP COMMISSION
DOCKET CONTROL

MICHAEL P. KEARNS
INTERIM EXECUTIVE DIRECTOR

1
2 **BEFORE THE ARIZONA CORPORATION COMMISSION**

3 COMMISSIONERS

4 KRISTIN K. MAYES, Chairman
5 GARY PIERCE
6 PAUL NEWMAN
7 SANDRA D. KENNEDY
8 BOB STUMP

9 IN THE MATTER OF THE APPLICATION OF
10 TELEFYNE INCORPORATED FOR APPROVAL
11 TO CANCEL ITS CERTIFICATE OF
12 CONVENIENCE AND NECESSITY FOR RESOLD
13 LONG DISTANCE AND ALTERNATIVE
14 OPERATOR SERVICES.

DOCKET NO. T-04027A-06-0061

DECISION NO. _____

ORDER

11 Open Meeting
12 March 3 and 4, 2009
13 Phoenix, Arizona

14 **BY THE COMMISSION:**

15 * * * * *

16 Having considered the entire record herein and being fully advised in the premises, the
17 Arizona Corporation Commission ("Commission") finds, concludes, and orders that:

18 **FINDINGS OF FACT**

19 1. Telefyne Incorporated ("Telefyne") was granted a Certificate of Convenience and
20 Necessity ("CC&N") to provide competitive resold long distance services and alternative operator
21 services ("AOS") in Decision No. 65410 (November 20, 2002). In the Decision, Telefyne was
22 prohibited from requiring its Arizona customers to pay advances, prepayments, or deposits for any of
23 its products or services. Telefyne was not required to obtain a performance bond.

24 2. On February 1, 2006, Telefyne filed with the Commission an application to cancel its
25 CC&N to provide resold long distance and AOS. In its application, Telefyne stated that it no longer
26 intends to provide telecommunications services in Arizona, currently has no customers, and has not
27 collected deposits or advance payments from Arizona customers.

28 3. On February 10, 2006, the Commission's Utilities Division Staff ("Staff") issued a
Letter of Insufficiency and Data Request to Telefyne via its attorney.

1 4. Nothing was filed in this docket between February 10, 2006, and September 13, 2007,
2 when a Procedural Order was issued requiring Staff to file an update on the matter by October 4,
3 2007.

4 5. On October 2, 2007, Staff again issued a Letter of Insufficiency and Data Request to
5 Telefyne via its attorney.

6 6. On October 3, 2007, Staff issued a Letter of Insufficiency and Data Request to
7 Telefyne directly.

8 7. On October 4, 2007, Staff filed a Staff Update stating that Staff had contacted
9 Telefyne's attorney by e-mail on September 17, 2007, and had received a response by e-mail on
10 October 2, 2007, stating that the attorney no longer represented Telefyne on this matter. Staff stated
11 that it then sent a copy of its Letter of Insufficiency and Data Request directly to Telefyne by
12 certified mail. Staff recommended that the matter not be administratively closed.

13 8. Nothing was filed in the docket between October 4, 2007, and April 2, 2008, when a
14 Procedural Order was issued requiring Staff to file an update on the matter by April 23, 2008.

15 9. On April 17, 2008, Staff filed a Staff Update stating that Staff had not received a
16 response to the Letter of Insufficiency and Data Request sent to Telefyne on October 3, 2007. Staff
17 further stated that it had been informed by Telefyne's attorney that the attorney would actually be
18 handling this matter and that responses to Staff's Data Request were being processed. Staff again
19 recommended that the matter not be administratively closed.

20 10. On April 25, 2008, Telefyne filed responses to Staff's Data Request.

21 11. In its responses to Staff's Data Request, Telefyne stated that it never provided services
22 in Arizona, never had any customers in Arizona, and did not publish legal notice of its application for
23 cancellation for those reasons. Telefyne further stated that it was closing its business, that it did not
24 have a performance bond, that it never collected any prepayments, that it had no affiliates currently
25 offering telecommunications services in Arizona, and that it was not providing resold long distance
26 and AOS in any other states.

27 12. On December 12, 2008, Staff filed its Staff Report recommending that Telefyne's
28 CC&N be cancelled.

13. In the Staff Report, Staff stated that Telefyne's annual report filed in 2005 indicated that Telefyne had no customers at that time. According to Staff's Data Request, the fiscal year 2004 annual report filed in 2005 was the only annual report Telefyne ever filed with Staff.

14. Staff stated that Telefyne reported that it has no employees or facilities in Arizona.

15. The Commission's Consumer Services Staff has indicated that no complaints, inquiries, or opinions were filed regarding Telefyne from February 7, 2006, to April 29, 2008.

16. The Commission's Corporations Division has reported that Telefyne is not in good standing and, in fact, that its authority to transact business in Arizona was revoked effective August 7, 2006, for failure to file its 2005 annual report with the Corporations Division.

17. Staff's Compliance Section has indicated that Telefyne failed to file conforming tariffs as required by Decision No. 65410.

18. Staff recommends approval of Telefyne's application to cancel its CC&N because Telefyne is not conducting business and has never provided service to customers in Arizona. Further, Staff recommends that the requirements of Arizona Administrative Code ("A.A.C.") R14-2-1107 be waived.

19. A.A.C. R14-2-1107(A)(2) and (4) and (B), which impose notice and other requirements upon a competitive telecommunications provider that intends to discontinue service, do not apply to a telecommunications provider that has never provided telecommunications service in Arizona. (Decision No. 70040 (December 4, 2007).)

20. Staff's recommendation to cancel Telefyne's CC&N is reasonable and should be adopted.

CONCLUSIONS OF LAW

1. Telefyne is a public service corporation within the meaning of Article XV of the Arizona Constitution and A.R.S. §§ 40-281 and 40-282.

2. The Commission has jurisdiction over Telefyne and the subject matter of the application.

3. A.A.C. R14-2-1107(A)(2) and (4) and (B) do not apply to Telefyne because Telefyne has never provided telecommunications service in Arizona.

4. The cancellation of Telefyne's CC&N to provide resold long distance and AOS is in the public interest.

ORDER

IT IS THEREFORE ORDERED that Telefyne Incorporated's Certificate of Convenience and Necessity to provide resold long distance and alternative operator services in the State of Arizona, granted in Decision No. 65410 (November 20, 2002), is hereby cancelled.

IT IS FURTHER ORDERED that the Utilities Division shall update the compliance status for Docket No. T-04027A-01-0501 consistent with the cancellation of the Certificate of Convenience and Necessity granted to Telefyne Incorporated under that Docket.

IT IS FURTHER ORDERED that this Decision shall become effective immediately.

BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

CHAIRMAN

COMMISSIONER

COMMISSIONER

COMMISSIONER

COMMISSIONER

IN WITNESS WHEREOF, I, MICHAEL P. KEARNS, Interim Executive Director of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of the Commission to be affixed at the Capitol, in the City of Phoenix, this ____ day of _____, 2009.

MICHAEL P. KEARNS
INTERIM EXECUTIVE DIRECTOR

DISSENT _____

DISSENT _____

SNH:db

1 SERVICE LIST FOR: TELEFYNE INCORPORATED

2 DOCKET NO.: T-04027A-06-0061

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